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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/644,937

08/21/2003

Jae Seung Lee

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7590

06/20/2006

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EXAMINER

DOERRLER, WILLIAM CHARLES

ART UNIT

PAPER NUMBER

3744

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/644,937	Applicant(s) LEE ET AL.	
	Examiner William C. Doerrler	Art Unit 3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14-25,27,28,30-47 and 50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3-12,14-25,27,28,30-47 and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5-18-2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Priority*

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Constantini et al (3,178,902).

Constantini et al '902 shows in figure 9 a refrigerator having an air cooling section extending up the rear of the housing with a front -top mounted machine room. When the cooling section is connected, the cabinet includes the cooling section.

Claims 1, 3, 10 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Maynard et al (3,712,078).

Maynard et al shows in figure 6 a refrigerator having an air cooling section extending up the rear of the housing with a front -top mounted machine room. When the cooling unit is on top, as shown, a rear portion of the wall extends to form an air cooling section as the top of the food storage compartment.

Claims 1, 10, 11 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gidseg (4,776,182).

Gidseg shows in figures 1 and 3, a refrigerator having an integral rear extension which houses the evaporator and fan to circulate cold air, as well as a front mounted compressor compartment.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Maynard et al, Gidseg or Constantini et al '902 in view of the European patent from the IDS (Watanabe, EP 1,174,666).

Maynard et al, Gidseg, and Constantini et al '902 each disclose applicants' basic inventive concept, a refrigerator with a rear extension for the air cooling device and a front machine room, substantially as claimed with the exception of using a cross flow

fan above the evaporator to provide the cold air flow. Watanabe shows this feature to be old in the refrigerator air flow art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Watanabe to modify any one of Gidseg, Maynard et al or Constantini et al '902 by using a top mounted cross flow fan to provide sufficient cold air flow throughout the refrigerator compartment.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Maynard et al, Gidseg or Constantini et al '902 in view of Silva (5,284,023)). Maynard et al, Gidseg and Constantini et al '902 each disclose applicants' basic inventive concept, a refrigerator with a rear extension for the air cooling device and a front machine room, substantially as claimed with the exception of using a hinged cover for the machine room. Silva shows this feature to be old in the refrigerator air flow art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Silva to modify any one of Gidseg, Maynard et al or Constantini et al '902 by using a hinged cover for the compressor compartment to provide easy access for maintenance.

Claims 11,12,14-19,22,23,25,27,28,30,32-41,46,47 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Maynard et al, Gidseg or Constantini et al '902 in view of Constantini et al (3,122,899). Maynard et al, Gidseg and Constantini et al '902 each disclose applicants' basic inventive concept, a refrigerator with a rear extension for the air cooling device and a front machine room, substantially as claimed with the exception of providing an air cooling unit for both a freezer and a refrigerator. Constantini et al '899 shows this

feature to be old in the top mounted machine room and air circulation device art. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Constantini et al '899 to modify any one of Gidseg, Maynard et al or Constantini et al '902 by using a top mounted air cooler for both a refrigerator and a freezer to provide efficient two temperature cooling for separate compartments. In regard to claims 14 and 16, figure 5 of Constantini et al '899 shows a partition plate separating air inlet 42 from air outlet 43.

Claims 20,21 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maynard et al, Gidseg and Constantini et al '902 in view of Constantini et al '899 as applied to claims 12-19,22,23,25-30,32-41,46,47 and 50 above, and further in view of Montes.

Maynard et al, Gidseg and Constantini et al '902, each as modified, disclose applicants' basic inventive concept, a freezer/refrigerator with an upper machine compartment used to provide cooling to an upper cooling air system which provides cold air to both the freezer and refrigerator, substantially as claimed with the exception of using panels with interlocking tabs and grooves for the sides of the refrigerator. Montes shows this feature to be old in the insulated panel art. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention from the teaching of Montes to use interlocking panels for the sides of the refrigerator to provide a device which is quickly assembled, yet prevents the flow of air between panels.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maynard et al, Gidseg and Constantini et al '902 in view of Constantini et al '899 as applied to claims 12-19,22,23,25-30,32-41,46,47 and 50 above, and further in view of Silva. Maynard et al, Gidseg and Constantini et al '902, each as modified, disclose applicants' basic inventive concept, a freezer/refrigerator with an upper machine compartment used to provide cooling to an upper cooling air system which provides cold air to both the freezer and refrigerator, substantially as claimed with the exception of using a cross flow fan. Silva shows this feature to be old in the refrigerator and freezer art. It would have been obvious to one of ordinary skill in the art at the time of applicants' invention from the teaching of Silva to use a cross flow fan to provide sufficient airflow in a relatively flat outline.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1,3-12,14-25,27,28,30-47 and 50 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 2 and 8-15 of copending Application No. 10/687,673. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 2 of the '673 application has been amended to include the structure of the claims of this application. Both claim a refrigerator with a food compartment with a top rear projection forming an air cooling chamber with an evaporator and a blower as well as a front, top mounted machine room. The other application claims that the cooling chamber is removable. This is seen as obvious as applicant has not clearly claimed in this application that the cooling chamber is not removable. Making a part non-removable is considered well within the scope of the ordinary practitioner in the art and therefore obvious to an ordinary practitioner to produce a device with less chance of air leakage. The addition of a second cooling chamber is seen as obvious duplication of parts.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

Gidseg, Maynard and Constantini et al '902 each show refrigeration compartments with an upper rear air cooling chamber with an evaporator and an air moving device and a front mounted machine room. It is agreed that these cooling chambers are mounted to the food storage chamber. It is unclear why these references



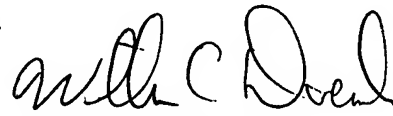
do not meet the limitations of the claims as currently written. When the cooling units are attached the resultant refrigerator will have a top rear portion which extends as the upper portion of the food storage compartment. While the cooling units are designed to be relatively easy to move, the devices are not seen as inoperable while connected, which is the instance used for the rejection. The cooling units are clearly intended to be mounted to the food compartments, and when they are, all of applicants' claimed limitations are met. Applicants have not claimed that the rear wall of the refrigerator is one-piece. Even if applicants were to claim a one piece rear wall, the above references would be seen as obviously modified to achieve a one piece wall. This will not be seen as forming an inoperative device as the rear wall of all of the cooling chambers (except Constanini '902) are made to be sealed to the rear wall of the food chamber for a relatively long time (the life of the device or at least as long as the cooling unit continues to function).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William C Doerrler  
Primary Examiner  
Art Unit 3744

WCD